

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA, *et al.*,

Plaintiffs,

v.

JETBLUE AIRWAYS CORPORATION and
SPIRIT AIRLINES, INC.

Defendants.

Case No. 1:23-cv-10511

CERTIFICATION OF RELATED CASE

Pursuant to Local Rule 40.1(g), this case is related to Case No. 1:21-cv-11558, *United States et al. v. American Airlines Group Inc. and JetBlue Airways Corporation* (the “NEA Case”). The NEA Case arose from JetBlue’s agreement to share revenues and coordinate capacity with American Airlines in markets/routes involving four airports in the New York City and Boston areas through the Northeast Alliance (the “NEA”).

Two months prior to the start of the NEA Case trial, JetBlue entered into a merger agreement with Spirit Airlines (the “Proposed Acquisition”). The Proposed Acquisition would stop competition between JetBlue and Spirit on hundreds of nonstop and connecting routes, eliminate the largest ultra-low-cost airline in the country, and, unless and until the NEA is enjoined, expand coordination between JetBlue and American Airlines.

Plaintiffs the United States, the Commonwealth of Massachusetts, and the District of Columbia and Defendant JetBlue are parties in both cases. The cases also involve many of “the same or substantially similar issues of fact.” L.R. 40.1(g)(1)(B)(i).

To analyze the competitive effects of the Proposed Acquisition, the Court will hear evidence and evaluate how JetBlue would grow, utilize its assets, and set fares absent the Proposed Acquisition. This analysis includes an assessment of JetBlue’s network plans, aircraft orders and configurations, and pricing strategy, issues with which the Court is familiar from the trial of the *NEA Case*. Indeed, the harm from the Proposed Acquisition is enhanced by JetBlue’s participation in the NEA. *See* Compl. ¶¶ 55-56. Accordingly, the instant case partly “arise[s] out of the same occurrence, transaction or property” as the *NEA Case*, another reason why the two cases are related. *See* L.R. 40.1(g)(1)(B)(ii).

There are many other substantially similar issues of fact in both cases, including (1) the trend toward consolidation in the airline industry, (2) the impact of constraints, including slots, takeoff authorizations, and gate limitations, at the four NEA airports, and (3) the role of ultra-low-cost carriers in reducing airline fares. Plaintiffs also expect that many witnesses who testified in the *NEA Case* will be called to testify in this case.

In light of the Court’s familiarity with the competitive landscape of the airline industry, JetBlue’s network plans and other strategies, and numerous other facts common to both cases, trying this case in this Court will promote judicial economy and administrative efficiency, and will minimize the risk of inconsistent factual findings, judgments, or remedies. *See Bailey v. Dart Container Corp. of Mich.*, 980 F. Supp. 584, 590 n.11 (D. Mass. 1997) (“The related case rule enhances the administration of the court by avoiding piecemeal litigation and minimizing the occurrence of inconsistent decisions.”).

Dated: March 7, 2023

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA:

/s/ Edward W. Duffy
EDWARD W. DUFFY*
Senior Trial Counsel

AARON M. TEITELBAUM
Senior Litigation Counsel

BRENDAN SEPULVEDA
DON P. AMLIN
MAISIE A. BALDWIN
GRANT A. BERMANN
JOHN M. BRIGGS
MICHAEL B. DERITA
JOHN J. DIMARCO
MICHELLE LIVINGSTON
JAMES L. MOORE III
MICHELLE PARK
SARAH V. RIBLET
JOHN R. THORNBURGH II
Trial Attorneys

United States Department of Justice
Antitrust Division
450 Fifth Street, NW, Suite 8000
Washington, DC 20530
Telephone: (202) 812-4723
Facsimile: (202) 307-5802
Email: edward.duffy@usdoj.gov

*Attorneys for Plaintiff United States of
America*

*Attorney of Record

FOR PLAINTIFF COMMONWEALTH OF MASSACHUSETTS:

ANDREA JOY CAMPBELL
Attorney General

/s/ William T. Matlack
WILLIAM T. MATLACK (MA BBO No. 552109)
Assistant Attorney General, Chief, Antitrust Division
DANIEL H. LEFF (MA BBO No. 689302)
Assistant Attorney General

Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108
Tel: (617) 727-2200
Email: William.Matlack@mass.gov

*Attorneys for Plaintiff Commonwealth of Massachusetts
and Local Counsel for the District of Columbia and the
State of New York*

FOR PLAINTIFF DISTRICT OF COLUMBIA:

BRIAN L. SCHWALB
Attorney General for the District of Columbia

JENNIFER C. JONES (DC Bar No. 1737225)
Deputy Attorney General
Public Advocacy Division

/s/ Adam Gitlin
ADAM GITLIN (DC Bar No. 90004308)
Chief, Antitrust and Nonprofit Enforcement Section
C. WILLIAM MARGRABE (NJ Bar No. 221042017)
Assistant Attorney General

Office of the Attorney General
400 6th Street NW, Suite 10100
Washington, D.C. 20001
Telephone: (202) 727-6294
adam.gitlin@dc.gov
will.margrabe@dc.gov

Attorneys for Plaintiff District of Columbia

FOR PLAINTIFF STATE OF NEW YORK:

LETITIA JAMES
Attorney General of New York

/s/ Elinor Hoffmann
ELINOR R. HOFFMANN (NY Bar Reg. No. 1350453)
Chief, Antitrust Bureau
CHRISTOPHER D'ANGELO
Chief Deputy Attorney General
Economic Justice Division
JEREMY R. KASHA
Assistant Attorney General
MORGAN J. FEDER
Assistant Attorney General

New York State Office of the Attorney General
28 Liberty Street, 20th Floor
New York, NY 10005
Phone: (212) 416-8269
Email: Elinor.Hoffmann@ag.ny.gov

Attorneys for Plaintiff State of New York